

1 J. Morrow Otis (CSB #039311)
Steven L. Iriki (CSB # 142533)
2 Matthew E. McCabe (CSB #136541)
OTIS CANLI & IRIKI, LLP
3 625 Market St., 4th Floor
San Francisco, CA 94105-3306
4 Telephone: (415) 362-4442
Facsimile: (415) 362-7332
5 E-mail: jmo@ocilaw.com

6 Attorneys for Third-Party Defendant
PERFORMANCE CONTRACTING, INC.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA for the use and
13 benefit of WEBCOR CONSTRUCTION, INC.
dba WEBCOR BUILDERS, and WEBCOR
14 CONSTRUCTION, INC. dba WEBCOR
BUILDERS,
15

16 Plaintiffs,

17 vs.

18 DICK/MORGANTI, a joint venture; DICK
CORPORATION; THE MORGANTI GROUP;
19 AMERICAN CASUALTY COMPANY OF
READING, PENNSYLVANIA; NATIONAL
20 UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA; and DOES 1-10, inclusive,
21

22 Defendants.

23 AMERICAN CASUALTY COMPANY OF
READING, PA; NATIONAL UNION FIRE
24 INSURANCE COMPANY OF PITTSBURGH,
PA,

25 Third-Party Plaintiffs,
26

Case No. 3:07-CV-02564-CRB

**DECLARATION OF MATTHEW E.
MCCABE IN SUPPORT OF
PERFORMANCE CONTRACTING,
INC.'S OPPOSITION TO MOTION
TO STAY PROCEEDINGS**

DATE: October 19, 2007

TIME: 10:00 a.m.

JUDGE: Hon. Charles R. Breyer
(Courtroom 8)

1 vs.

2 BOYETT CONSTRUCTION, INC., a California
 3 corporation; MARELICH MECHANICAL CO.,
 4 INC., a California corporation; PERFORMANCE
 5 CONTRACTING GROUP, INC. dba
 6 PERFORMANCE CONTRACTING, INC., a
 7 Delaware corporation; PERMASTEELISA
 8 GROUP USA HOLDINGS CORP., a Delaware
 9 corporation fdba PERMASTEELIS CLADDING
 10 TECHNOLOGIES L.P., a Delaware limited
 11 partnership, fdba PERMASTEELISA
 12 CLADDING TECHNOLOGIES, LTD.;
 13 ROSENDIN ELECTRIC, INC., a California
 14 corporation; THIRD PARTY DOE
 15 DEFENDANTS 1 THROUGH 20.

16 Third Party Defendants.

17 I, Matthew E. McCabe, declare as follows:

18 1. I am a member of the State Bar of California and am associated with the law firm
 19 Otis Canli and Iriki, LLP, the attorneys of record for third-party defendant Performance
 20 Contracting, Inc. ("PCI") in the above-captioned case. If called upon, I could and would
 21 competently testify to the matters stated herein.

22 2. The deposition of Fred Daven, was taken on July 27, 2006 in San Francisco
 23 Superior Court Case No. CGC 06-450903. Mr. Daven oversaw the construction of the new GSA
 24 Federal Building located at 7th and Mission Streets on behalf of Dick/Morganti "D/M"). See
 25 pages 6-9 of the Daven deposition transcript, attached hereto as Exhibit 1.

26 3. At his deposition Mr. Daven authenticated an email dated August 3, 2005 that he
 27 sent to Dick Company employees W. L. Higgins, Dan Arana, and J. Dravet. A true and correct
 copy of that email (which is Exhibit 8 to the deposition transcript) is attached hereto as Exhibit 2.
 A true and correct copy of the deposition testimony authenticating the email is attached hereto as
 Exhibit 3. In the email Mr. Daven stated that "[b]ecause we didn't quite handle things correctly

1 at the start of the project and because the subs are financing the project, their taste has really
2 soured.”

3 4. Attached hereto as Exhibit 4 are pages 39-40 of the Daven transcript. In these
4 pages Mr. Daven testified that he had been working on D/M’s claim to the GSA since September
5 2005 until the time he left the company in June 2006.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Executed on September 20, 2007, at San Francisco, California.

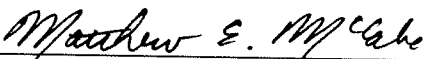
8
9 
10 Matthew E. McCabe

EXHIBIT 1

A006382
FRED DAVEN - July 27, 2006

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3

4 - - -

PERFORMANCE CONTRACTING, INC.,)

)

Plaintiff,)

)

vs.) No. CGC 06-450903

)

DICK/MORGANTI, a joint venture;,)

)

DICK CORPORATION; THE MORGANTI)

GROUP, INC.; and DOES 1 through 50,))

inclusive,)

)

Defendants.)

)

11 DEPOSITION OF
12
13
14

15 FRED DAVEN
16

17 SAN FRANCISCO, CALIFORNIA

18 THURSDAY, JULY 27, 2006
19
20

ATKINSON-BAKER, INC.

COURT REPORTERS

(800) 288-3376

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REPORTED BY: PATRICIA SEGOVIA-VALDES, CSR NO. 8416

FILE NO.: A006382
25

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Page 2	Page 4
<p>1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA</p> <p>2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO</p> <p>3</p> <p>4 ---</p> <p>5 PERFORMANCE CONTRACTING, INC.,)</p> <p>6)</p> <p>7 Plaintiff.)</p> <p>8 vs.) No. CGC 06-450903</p> <p>9)</p> <p>10 DICK/MORGANTI, a joint venture;,)</p> <p>11 DICK CORPORATION; THE MORGANTI)</p> <p>12 GROUP, INC.; and DOES 1 through 50,) inclusive,)</p> <p>13)</p> <p>14 Defendants.)</p> <p>15 _____)</p> <p>16</p> <p>17 Deposition of FRED DAVEN, taken on behalf of</p> <p>18 Plaintiff, at Otis Canli & Iriki, 180 Montgomery Street,</p> <p>19 Suite 1240, San Francisco, California 94104, commencing</p> <p>20 at 1:30, p.m., Thursday, July 27, 2006, before PATRICIA</p> <p>21 SEGOVIA-VALDES, CSR NO. 8416.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2 WITNESS: FRED DAVEN</p> <p>3</p> <p>4 PAGE</p> <p>5 EXAMINATION BY MR. STEVEN L. IRIKI 6</p> <p>6</p> <p>7 EXHIBITS:</p> <p>8 1 Subcontract Agreement GSA Project 15</p> <p>9 2 Letter from Jim Strout to Fred Daven</p> <p>10 and James Dravet dated June 13,</p> <p>11 2005 20</p> <p>12 3 Letter from Fred Daven to John Nolte</p> <p>13 dated July 7, 2005 22</p> <p>14 4 String of e-mails. Last e-mail from</p> <p>15 Fred Daven to Jim Strout dated</p> <p>16 July 12, 2005 24</p> <p>17 5 Letter from Roger Wiesnoski to Fred</p> <p>18 Daven dated July 13, 2005 27</p> <p>19 6 Letter from Fred Daven to Jim Strout</p> <p>20 dated July 20, 2005 27</p> <p>21 7 Letter from Fred Daven to Jim Strout</p> <p>22 ad Steve Nelle dated September 9,</p> <p>23 2005 30</p> <p>24 8 E-mail from Fred Daven to W.</p> <p>25 Higgins, Dan Arana, J. Dravet</p>
<p style="text-align: center;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 OTIS CANLI & IRIKI, LLP</p> <p>4 By: STEVEN L. IRIKI</p> <p>5 180 Montgomery Street</p> <p>6 Suite 1240</p> <p>7 San Francisco, California 94104</p> <p>8 (415) 362-4442</p> <p>9</p> <p>10 PERFORMANCE CONTRACTING GROUP</p> <p>11 By: ROGER LENNENBERG</p> <p>12 Corporate Counsel</p> <p>13 8015 S.W. Hunziker Road</p> <p>14 Tigard, OR 97223</p> <p>15 (503) 603-5345</p> <p>16 PERFORMANCE CONTRACTING GROUP</p> <p>17 By: Jon Miklos</p> <p>18 Senior Vice President</p> <p>19 16400 College Boulevard</p> <p>20 Lenexa, KS 66219</p> <p>21 (913) 310-3377</p> <p>22</p> <p>23 FOR THE DEFENDANTS:</p> <p>24 PECKAR & ABRAMSON</p> <p>25 By: RAYMOND M. BUDDIE</p> <p>26 250 Montgomery Street</p> <p>27 16th Floor</p> <p>28 San Francisco, California 94104</p> <p>29 (415) 837-1968</p> <p>30 DICK CORPORATION</p> <p>31 By: MICHAEL T. AMBROSO</p> <p>32 Corporate Counsel</p> <p>33 P.O. Box 10896</p> <p>34 Pittsburgh, PA 15236-0896</p> <p>35 (412) 384-1287</p> <p>36</p> <p>37 ALSO PRESENT:</p> <p>38</p> <p>39 JIM STROUT, Performance Contracting Group.</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p>	<p style="text-align: center;">Page 5</p> <p>1 dated August 3, 2005 34</p> <p>2 9 PCI COR Log 37</p> <p>3 10 Letter from James Strout to Ron</p> <p>4 Brookfield dated April 6, 2006 38</p> <p>5 11 PCI Log of CO's and COR's 45</p> <p>6</p> <p>7 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:</p> <p>8 Is it your understanding that the</p> <p>9 language I just read to you</p> <p>10 from the subcontract is a</p> <p>11 pay of pay provision? 7 17</p> <p>12</p> <p>13 INFORMATION TO BE SUPPLIED:</p> <p>14 (None)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

A006382
FRED DAVEN - July 27, 2006

<p style="text-align: right;">Page 6</p> <p>1 FRED DAVEN</p> <p>2 having first been duly sworn, was</p> <p>3 examined and testified as follows:</p> <p>4 EXAMINATION BY MR. STEVEN L. IRIKI</p> <p>5 MR. IRIKI: Q. Good afternoon, Mr. Daven.</p> <p>6 First of all, could you please state and spell your name</p> <p>7 for the record.</p> <p>8 A. Fred Daven. D-A-V-E-N.</p> <p>9 Q. Mr. Daven, have you ever had your deposition</p> <p>10 taken before?</p> <p>11 A. Yes.</p> <p>12 Q. How many times have you been deposed before?</p> <p>13 A. Three.</p> <p>14 Q. Do you need for me to go through the ground</p> <p>15 rules governing your deposition today?</p> <p>16 A. I don't think so.</p> <p>17 Q. All right. There is one ground rules I am</p> <p>18 going to go over. You understand that your testimony</p> <p>19 today is under penalty of perjury? Even though we are</p> <p>20 in my conference room today, it's as if you're</p> <p>21 testifying in a court of law. Do you understand that?</p> <p>22 A. Yes.</p> <p>23 Q. Is there any reason why your deposition cannot</p> <p>24 go forward today?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Where is their office located?</p> <p>2 A. Alamo, California.</p> <p>3 Q. Can you give me the address, please?</p> <p>4 A. I don't know what the address is.</p> <p>5 Q. Do you remember what street they are on?</p> <p>6 A. I could look at my cards. 3189 Danville</p> <p>7 Boulevard.</p> <p>8 Q. Mr. Daven, what's your home address, please?</p> <p>9 A. 63 Foster Drive.</p> <p>10 Q. What city is that located in?</p> <p>11 A. San Ramon.</p> <p>12 Q. And where did you work before you went to work</p> <p>13 for Trans Can?</p> <p>14 A. Dick Corporation.</p> <p>15 Q. When did you start working for Dick</p> <p>16 Corporation?</p> <p>17 A. May of '04, I believe.</p> <p>18 Q. May of 2004?</p> <p>19 A. Yes.</p> <p>20 Q. When did you leave Dick Corporation?</p> <p>21 A. June of '06.</p> <p>22 Q. When you first started working for Dick</p> <p>23 Corporation, what was your job title?</p> <p>24 A. Director.</p> <p>25 Q. Was that your title when you left Dick</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Are you taking any medication that would</p> <p>2 affect your ability to give testimony today or that</p> <p>3 affects your memory?</p> <p>4 A. No.</p> <p>5 Q. Mr. Daven, if you could summarize your</p> <p>6 education for me since high school.</p> <p>7 A. I've got a bachelor of science degree in</p> <p>8 architecture.</p> <p>9 Q. And where did you obtain that degree?</p> <p>10 A. North Carolina State.</p> <p>11 Q. What year did you graduate from North Carolina</p> <p>12 State?</p> <p>13 A. 1977.</p> <p>14 Q. How are you currently employed? Who do you</p> <p>15 work for?</p> <p>16 A. Trans Can Development. T-R-A-N-S, C-A-N.</p> <p>17 Q. And when did you start working for Trans Can?</p> <p>18 A. Tenth of July.</p> <p>19 Q. And what's your position with Trans Can?</p> <p>20 A. Executive vice president and chief operating</p> <p>21 officer.</p> <p>22 Q. What kind of work does Trans Can do?</p> <p>23 A. They are a developer.</p> <p>24 Q. What kind of projects do they develop?</p> <p>25 A. Commercial and retail.</p>	<p style="text-align: right;">Page 9</p> <p>1 Corporation?</p> <p>2 A. Yes.</p> <p>3 Q. What were your duties and responsibilities as</p> <p>4 a director?</p> <p>5 A. Overseeing the San Francisco federal building</p> <p>6 project.</p> <p>7 Q. The project located near the corner of 7th and</p> <p>8 Mission?</p> <p>9 A. Correct.</p> <p>10 Q. That was for the General Services</p> <p>11 Administration?</p> <p>12 A. That's who we were building it for, correct.</p> <p>13 Q. Where did you work before you worked for Dick</p> <p>14 Corporation?</p> <p>15 A. Swinerton Builders.</p> <p>16 Q. When did you start working for Swinerton?</p> <p>17 A. I would say around 2002.</p> <p>18 Q. Did you work for them until 2004?</p> <p>19 A. Yes.</p> <p>20 Q. What was your job title with Swinerton when</p> <p>21 you started?</p> <p>22 A. Project executive.</p> <p>23 Q. What was your job title when you left</p> <p>24 Swinerton?</p> <p>25 A. Same.</p>

EXHIBIT 2

James R. Dravet

PCI

From: Daven, Fred H. [fhdaven@dickcorp.com]
Sent: Wednesday, August 03, 2005 11:56 AM
To: wlhiggins@dickcorp.com
Cc: Dan Araña; jdravet@dcmsx03.dickcorp.com
Subject: PCI

Bill - Have you had a chance to speak to the PCI VP about the project? If not, please make this request to do so a priority.

Issues that need to be discussed are;

- 1) Center Core Framing - They are refusing, (verbally) to perform the work unless a change order is issued. This is a \$1.8MM impact to them. It is a potential delay to the project. Must be resolved by next week.
- 2) Interior design/engineering support not being performed in an adequate or timely manner. This has schedule implications.
- 3) The Cement Board Panels - PCI is using a lame excuse about having attachment clip issues resolved prior to ordering the units. (must come from Switzerland). They are balking at every opportunity. Their upper management needs to better support this project and plumb up the project staff/management. (PCI will now have to expedite the units and fly them here).

To provide you some history; PCI met with me twice and issued a letter asking that their contract be terminated. They stated that they are losing over \$2MM on the project. I informed them that I will not do that. I've been working close with them, helping to support their efforts at every turn. They need to get off the dime.

We may need to look at releasing them from their contract and notifying their bonding company. I have a good sub ready to step in and complete the project. I know this is a last resort, but we need to be prepared to do whatever it takes to get the project completed.

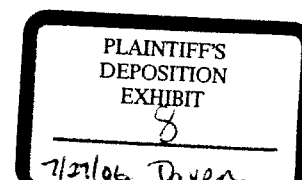
I've worked with PCI on other large and complex projects. They have always performed well and they were never high maintenance. Because we didn't quite handle things correctly at the start of the project and because the subs are financing the project, their taste has really soured. We need them to step up and start getting into gear.

I'm holding off speaking to them in a more stern manner until you speak with their execs. Please let me know your plans.

Thanks

Fred Daven
Director

Dick/Morganti JV
Office - 415.522.1320
Cell - 415.760.7753



8/3/2005

EXHIBIT 3

A006382

FRED DAVEN - July 27, 2006

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1 and then split the remainder with PCI?

2 A. I believe that's what it says.

3 Q. Do you recall, did PCI accept this proposal?

4 A. I don't believe they did.

5 Q. Who ended up doing the in-fill framing work,
6 do you remember?

7 A. Yes. We hired a separate subcontractor.

8 Q. Is that Burger Brothers?

9 A. Yes.

10 Q. Did they do the work on a T and M basis?

11 A. Yes.

12 Q. To your knowledge, have they finished the
13 in-fill framing?

14 A. I haven't been on the project since October, I
15 don't know.

16 (E-mail from Fred Daven to W.
17 Higgins, Dan Arana, J. Dravet dated
18 August 3, 2005 marked Plaintiff's
19 Exhibit No. 8 for identification.)

20 MR. IRIKI: For the record, the next exhibit
21 I've marked is Exhibit No. 8, it's a one-page e-mail, it
22 appears to be from Mr. Daven to W.L. Higgins with a CC
23 to Dan Arana and J. Dravet, it's dated August 3, 2005.

24 Mr. Daven, do you recognize this e-mail?

25 A. I'm going through it right now.

Q. Take your time, I'm sorry.

Page 35

1 A. Okay.

2 Q. Do you recognize the e-mail?

3 A. Yes.

4 Q. Is this an e-mail that you sent on or about
5 August 3, 2005?

6 A. More than likely.

7 Q. Who is W.L. Higgins?

8 A. Our COO.

9 Q. And who is Dan Arana?

10 A. He is senior vice president.

11 Q. Of Dick Corp?

12 A. Dick Pacific.

13 Q. And who is J. Dravet?

14 A. Project manager.

15 Q. For Dick Corp?

16 A. Yes.

17 Q. He was a project manager for the GSA. project?

18 A. Yes.

19 Q. And the second to the last paragraph, you say,

20 "I've worked with PCI in other large and complex
21 projects. They have always performed well and they were
22 never high maintenance." Do you see that?

23 A. Yes.

24 Q. Were you referring to the Franchise Tax Board
25 project in this paragraph?

Page 36

1 A. Yes.

2 Q. Prior to the GSA project, had you worked on
3 any projects with Jim Strout before?

4 A. No.

5 Q. The sentence, the paragraph goes on to read,
6 "Because we didn't quite handle things correctly at the
7 start of the project and because the subs are financing
8 the project, their taste has really soured. We need
9 them to step up and start getting into gear."

10 What do you mean "Because we didn't quite
11 handle things correctly at the start of the project"?

12 A. There is documentation from the subs and our
13 documentation supporting them.

14 Q. What were you referring to, though?

15 A. It was a general statement with the problems
16 that we have had with documentation from subcontractors,
17 and us being able to process the documentation and try
18 to get some resolution to the issues.

19 Q. When you say processing the documentation, are
20 you including change orders in that?

21 A. They could be change order proposals, whatever
22 it is, issues of design, it doesn't matter.

23 Q. You go on to say that, "because the subs are
24 financing the project, their taste has really soured."
25 A. Yes.

Page 37

1 Q. When you say that they are financing the
2 project, do you mean that the subcontractors were being
3 asked to do extra work for which they weren't being paid
4 for?

5 A. Depends on what you call extra work. They
6 were directed to do the work by the GSA, as we were.

7 Q. But the subcontractors, many of them took the
8 position that that work was extra work?

9 A. They took the position that it was extra work.

10 Q. And the GSA wasn't paying for that work,
11 correct?

12 A. The GSA believed there was no entitlement.

13 Q. In turn, Dick/Morganti wasn't paying the
14 subcontractors for that work?

15 A. We were passing down the directives to the
16 subcontractors as our contract states it.

17 Q. To your knowledge, in taking that position,
18 was Dick/Morganti relying on the pay of pay provisions
19 in its contract with its various subcontractors?

20 A. Not to my knowledge.

21 Q. All right. Why don't we take a break, a short
22 break.

23 (Off the record.)

24 (PCI COR Log marked Plaintiff's
25 Exhibit No. 9 for identification.)

10 (Pages 34 to 37)

800-288-3376

EXHIBIT 4

A006382

FRED DAVEN - July 27, 2006

Page 38

1 MR. IRIKI: We will go back on the record.
 2 I have marked as the next exhibit Exhibit
 3 No. 9, a four-page document on Dick/Morganti stationery
 4 and it's entitled PCI COR log.

5 **Q. Mr. Daven, do you recognize this document?**
 6 A. Not generally, no.

7 **Q. Do you recall seeing any change order logs**
 8 **that Dick/Morganti had generated summarizing change**
 9 **orders submitted by PCI?**

10 A. I may have.

11 (Letter from James Strout to Ron
 12 Brookfield dated April 6, 2006
 13 marked Plaintiff's Exhibit No. 10
 14 for identification.)

15 MR. IRIKI: For the record, I've marked as the
 16 next exhibit Exhibit No. 10, a four-page document. The
 17 first page is a letter from the James Strout to Ron
 18 Brookfield, it's dated April 6, 2006.

19 **Q. First of all, Mr. Daven, do you recognize this**
 20 **letter?**

21 A. No, I don't.

22 **Q. You never received a copy of this letter?**

23 A. I never saw it.

24 **Q. Okay. In April of 2006, do you recall PCI**
 25 **ever taking the position that Dick/Morganti wasn't**
 26 **submitting their change order proposals to the owner?**

Page 39

1 A. I wasn't on the project at that time.

2 **Q. All right. Were you still working for the**
 3 **Dick Corporation in April of 2006?**

4 A. Yes.

5 **Q. Where were you located?**

6 A. Pleasanton.

7 **Q. Which project were you working on?**

8 A. I wasn't working on a project.

9 **Q. What were you doing?**

10 A. I was developing a claim.

11 **Q. Which claim were you developing?**

12 A. Our claim against GSA.

13 **Q. On the GSA building?**

14 A. Yes.

15 **Q. When was the last time you worked at the**
 16 **project site?**

17 A. I would say September of '05.

18 **Q. September of '05, did you leave to go to**
 19 **Dick's offices in Pleasanton, did you say?**

20 A. Yes, we established an office there.

21 **Q. When you began working in the Pleasanton**
 22 **office in September of '05, what did you work on?**

23 MR. BUDDIE: I am not going to let you ask any
 24 specific questions about anything that invades
 25 attorney/client or attorney work product privilege.

Page 40

1 MR. IRIKI: Understood.

2 **Q. I am asking in general.**

3 A. Developing a claim for the subcontractors
 4 against GSA.

5 **Q. And is that what you worked on until you left**
 6 **Dick Corporation in June of 2006?**

7 A. Correct.

8 **Q. To your knowledge, did any part of that claim**
 9 **involve any work by PCI?**

10 A. Not at that time.

11 **Q. Mr. Daven, I am going to go back to something**
 12 **you touched upon earlier in your testimony. I believe**
 13 **you indicated that you have been deposed approximately**
 14 **three times before; is that correct?**

15 A. Correct.

16 **Q. The first time you were deposed, do you recall**
 17 **when that deposition took place?**

18 A. I would say late '70's.

19 **Q. Do you remember what that case involved?**

20 A. No, I don't.

21 **Q. Were you a party to the lawsuit?**

22 A. Yes.

23 **Q. Do you remember generally what type of case it**
 24 **was?**

25 A. I think it was the client that owed me money.

Page 41

1 **Q. So you sued the client?**

2 A. Yes.

3 **Q. The second time you were deposed, when was**
 4 **that?**

5 A. The second and third were with Swinerton.

6 **Q. The second deposition when you were with**
 7 **Swinerton, did that concern a particular project?**

8 A. The Franchise Tax Board.

9 **Q. Swinerton was the general contractor on that**
 10 **project?**

11 A. Correct.

12 **Q. Was Swinerton involved in litigation on that**
 13 **project?**

14 A. I believe so.

15 **Q. The third time you were deposed, did that**
 16 **involve a particular project?**

17 A. The same one.

18 **Q. Mr. Daven, when you worked on the GSA project,**
 19 **when you first started working on the project, do you**
 20 **remember if the project was behind schedule?**

21 A. I don't remember if it was behind schedule at
 22 that time or not. Or if it was, it's not something that
 23 I concentrated on at that point.

24 **Q. When you left the project, do you recall that**
 25 **the project was behind schedule?**